Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 244

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Respondent.

BRIEF ON BEHALF OF RESPONDENT.

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Of Counsel.

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STATEMENT OF FACTS.

This case is here on a writ of certiorari to the United States Circuit Court of Appeals of the Eighth Circuit to review a judgment of that court reversing a judgment of the United States District Court of North Dakota. This judgment of the District Court was in favor of the United States and against the Northern Pacific Railway Company in an action brought to recover penalties under Section 20 of the Act to Regulate Commerce as amended in 1910 (36 Stat. 556).

Prior to 1910 Section 20 provided that the Commission might require each carrier subject to the Act to file an annual report, calling for a large amount of statistical

and detailed information concerning the properties of the company and its business operations and provided:

> "If any carrier shall fail to make and file said annual reports within the time above specified or within the time extended by the Commission for making and filing the same, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default in respect thereto."

In 1910 the following provision was added:

> "The Commission shall also have authority by general or special orders to require said carriers to file both periodical and special reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or keep itself informed or which it is required to enforce and such periodical or special reports shall be under oath whenever the Commission so requires, and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission it shall be subject to the forfeitures last above provided."

The Hours of Service Act (34 Stat. 1416) provides:

> "It shall be unlawful for any common carrier subject to the Act to require or permit any employe actually engaged in or connected with the movement of any train to be or remain on duty for a longer period than sixteen consecutive hours."

It is provided however that the provisions of the act shall not apply in any case of casualty or unavoidable accident or the act of God, nor to crews of wrecking or relief trains. It is made the duty of the Interstate Commerce Commission to enforce this act.

The Commission on June 28, 1911, made a general order in the following form:

> "It is ordered that all carriers subject to the provisions of the Act entitled 'An act to promote the safety of employes and travellers upon railroads by limiting the hours of service of employes thereon,' approved March 4, 1907, report within thirty days after the end of each month under oath all instances where employes subject to said Act have been on duty for a longer period than that provided in said Act." (Record, p. 2.)

The first cause of action in the complaint charged that the defendant railway company failed on the 1st day of December, 1911, to make and file with the Interstate Commerce Commission a report containing all the instances where its employes were on duty during the month of October, 1911, for a longer period than provided in the act, and further alleged that on October 30, 1911, the defendant allowed a certain train crew to be on duty more than sixteen hours and had failed to make a report thereof. (Record, p. 2.)

The second, third, fourth and fifth causes of action were similar to the first except they charged failure to file such report respectively on the 2nd, 3rd, 4th and 5th days of December, 1911.

The defendant interposed its answer to the complaint which must be taken as true, as the judgment rendered was given on the admitted facts in the pleadings.

The defendant answered that on the 29th day of November, 1911, and within the prescribed thirty days it did make and file with the Interstate Commerce Commission a report in writing of all instances where its employes were employed more than the statutory period during the month of October, 1911; that said report was made under oath in the form and in accordance with the

regulations of the Interstate Commerce Commission. (Record, p. 10.)

The answer admitted that on October 29th, 1911, a train crew, consisting of an engineer, fireman, conductor and two brakemen, were called to go out on a wrecking train at 8:10 p. m. and alleges that at 8:10 p. m. it was found that it was not necessary for the wrecking train to go out, and the train crew were notified that they would not be required for duty until 10:35 p. m. of the same day; that none of the crew did any work between 8:10 and 10:35 p. m. except the engineer and fireman did keep the fire alive on the engine; that the crew handled the train between Jamestown and Mapleton and owing to certain delays did not arrive at Mapleton and were on duty until 1:15 p. m. October 30, 1911, at which time the crew were released from duty. If the time the crew were waiting to go out—from 8:10 p. m. to 10:35 p. m.,—is included they were on duty more than sixteen hours; if that time is not included they were on duty less than sixteen hours. (Record, p. 9.)

The answer admits that these instances of over service were not included in the report filed November 29, 1911, and alleges the omission thereof was through inadvertence and by mistake and was due to the fact that this defendant did not consider or understand that the instances were in fact violations of the statute or that it was necessary or required that the same should be included in said report and alleges that said report submitted by it and filed with the Interstate Commerce Commission was intended to be full, true, correct and complete in every particular and to embrace any and all instances where employes of this defendant had been kept in its service for

more than the statutory hours of service. (Record, p. 10.)

The District Court rendered judgment against the railway company for a penalty of one hundred dollars a day for five days or a total of five hundred dollars and costs (Record, page 11).

A writ of error was taken to the Circuit Court of Appeals of the Eighth Circuit and that court reversed the judgment of the District Court for the reason that on the admitted facts there was no failure to file a report of the instances of excessive service of its employes for the month of October, 1911, that the filing of a report that was merely inaccurate, although in good faith intended to be accurate, was not a failure to file the report (See opinion, Record, pages 17-23, and judgment, page 24).

We wish to call attention to an error in the date of filing the report as alleged in the amended answer in the record. The date should be Nov. 29, *1911*, instead of Nov. 29, *1912*. This same error seems to have been carried into the opinion of Judge Sanborn in one place. All of the matters referred to occurred in the year *1911*.

ARGUMENT.

I.

THE QUESTION TO BE DETERMINED IS THIS: IS THE FILING OF A REPORT THAT IS NOT IN ALL RESPECTS AN ACCURATE ONE, ALTHOUGH INTENDED TO BE ACCURATE, A FAILURE TO FILE THE REPORT REQUIRED BY THE ORDER OF THE COMMISSION SO AS TO MAKE THE COMPANY LIABLE TO THE PENALTY OF ONE HUNDRED DOLLARS A DAY SO LONG AS IT SHALL CONTINUE IN DEFAULT?

The intention of Congress in respect to this must be arrived at by an examination of the provisions of Section 20 of the Act to Regulate Commerce as amended, which prescribes the penalties sought to be enforced in this case.

Prior to the amendment of 1910 this section provided as follows:

> "The Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act. * * * Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for the same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floated debts and the interest paid thereon, the cost and value of the carriers' property, franchises and equipments; the number of employes and the salaries paid each class, the accidents to passengers, employes and other persons and the causes thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings and receipts from each branch of business and from all sources, the operating and other expenses; the balances of profit and loss,

and a complete exhibit of the financial operations of the carrier each year including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights or agreements, arrangements or contracts affecting the same as the Commission may require.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year and shall be made out under oath and filed with the Commission at its office in Washington on or before the thirtieth day of September then next following unless additional time be granted in any case by the Commission and if any carrier * * * subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified * * * such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto." (34 Stat. 593.)

By the Act of June 18, 1910, this provision was amended by adding thereto as follows:

"The Commission shall also have authority by general or special orders to require said carriers or any of them to file monthly reports of earnings and expenses and to file periodical or special or both periodical and special reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce, and such periodical or special reports shall be under oath whenever the Commission so requires, and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission it shall be subject to the forfeitures last above provided." (36 Stat. 556.)

Referring first to the annual report required by this section: The statute provides:

> "If any carrier subject to the provisions of the Act shall fail to make and file said annual reports within the time above specified * * * it shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto."

The penalty of one hundred dollars per day is evidently intended to secure promptness in making and filing the report. It is the failure to make and file the report at a specified time that is denounced and that is what the penalty refers to and not a failure to make and file a report that is in all respects accurate and complete.

It is only by giving the language used a strained and unnatural meaning and extending its scope by argument that it is possible to interpret this language to mean that the only report that complies with the statute is one that is true and accurate and if an inaccurate report is made and filed it is not the report required and therefore there is a failure to file the report required by the statute.

The application of the interpretation of the statute claimed by the government to provisions referring to the annual reports make it clear that Congress could not have intended the statute should be so construed.

The quotation from the statute above shows the enormous mass of detailed information that must be incorporated in each annual report. In case of any large railroad company this information must necessarily be gathered together by a considerable number of officers and employes of the company and it is almost an impossibility that such a report shall be complete and accurate in every respect and it is incomprehensible that Congress could have intended that an unintentional misstatement or omission in such a report would render the company

liable to a penalty of one hundred dollars a day until it was discovered and corrected. But such is the logical conclusion of the interpretation placed on the statute by the government. There is no ground for a distinction to be drawn between an annual report and a periodical report, both called for by the same statute. If the making and filing of a periodical report that is not complete and accurate is a failure to file the report, so the making and filing an annual report that is not complete and accurate is a failure to file that report.

The United States Circuit Courts of Appeals of the Seventh, Eighth and Ninth Circuits have examined the statute in question and are unanimous in the opinion that the penalty of one hundred dollars a day is not incurred where a carrier subject to the act in good faith files its monthly report as required by the order of the Commission and by mistake the report is inaccurate in some particulars, that is to say, that the filing of an inaccurate or incomplete report is not a failure to file the report.

Northern Pacific Ry. Co. v. U. S., 213 Fed. 162 (C. C. A., 8th Circuit).

O-W. R. & N. R. Co. v. U. S., 222 Fed. 887 (C. C. A., 9th Circuit).

Elgin Joliet & Eastern Ry. Co. v. U. S., 227 Fed. 411 (C. C. A., 7th Circuit).

(These three opinions are printed in full in the Appendix.)

Questions analogous to the one at bar have arisen in states which penalized trustees and directors of private corporations for failure to make and file reports containing certain information as to the corporation's affairs.

By Section 12, Chapter 40, Laws of 1848, New York, it was provided that certain corporations

> "shall annually within twenty days after the 1st day of January make a report * * * which shall state the amount of capital, and of the proportion actually paid in, and the amount of its existing debts, which reports shall be signed by the president and a majority of its trustees and shall be verified by the oath of the president or secretary of said corporation, * * * and if any of said companies shall fail so to do, all of the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted, before such report shall be made."

The Court of Appeals, construing this statute in Bonnell v. Griswold, 80 N. Y. 128, found that a report which in form at least complied with the statute was in fact filed, but was false in a material particular. It was claimed a *false* report was *no* report and did not meet the demands of the statute. The Court said the defendant could not be held for liability of the company's debt because it was not so declared by the statute. It held in express language that the

> "statutory liability imposed by Section 12 does not attach if a report is made in terms complying with the statute, *although some of the representations be untrue.*"

See also

Pier v. Hanmore, 86 N. Y. 95.

Matthews v. Patterson, 26 Pac. 812-813, 16 Colo. 215.

Whitney Arms Co. v. Barlow, 68 N. Y. 35.

An act of Congress provided that a master of any vessel bringing aliens into the United States, who shall fail to deliver to the immigration officer at the point of arrival

lists or manifests of all aliens on board as required by Sections 12 and 13 and containing the information therein specified, "shall pay to the collector of customs at the port of arrival the sum of ten dollars for each alien concerning whom the above information is not contained in any lists as aforesaid."

The master furnished the manifest, but the same was not correct in that the master, in answer to the question asked in the manifest concerning each of said aliens "By whom was passage paid?" said "By himself," which answer was not true.

It was claimed by the government that the penalty of ten dollars for each alien was incurred by filing this false manifest. The court held however that there was no failure to file the manifest and therefore the penalty prescribed for the failure to file the manifest had not been incurred.

The Court said:

> "No penalty is prescribed by the act for furnishing incorrect information. It is imposed for the failure to deliver lists or manifests with the information required, but not for delivering lists which might contain incorrect information. The act is, in its nature, penal, and, in order to render the master liable to the penalty imposed by the act, it must appear that he has neglected or omitted to do some act which the law made it his duty to perform."
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> "The law under consideration requires the master of a vessel bringing aliens into the United States to deliver to the immigration officers at the port of arrival lists or manifests of such aliens, said lists to contain certain information specified in the law, and it imposes a penalty for any neglect or omission to comply with the requirements of this law. If Congress had intended to impose a like penalty for any

incorrect or false information furnished in said lists or manifests, it seems it would have said so in the law. But it may be said that it is material, and was the intention of Congress to have correct information concerning the aliens in question; and it may be asked what assurance is there that the information contained in said lists will be correct and true in the absence of a penalty for giving incorrect or false information. While it may be true that it is material, and was the intent of the law to obtain correct information on the subjects inquired about, and we do not know the motive of Congress in omitting to prescribe a penalty for furnishing incorrect information, we may well infer that it was because it was considered that the verification of the lists by the signature and oath of the master would be a sufficient assurance that said lists would speak the truth. The oath required to the lists is that, 'according to the best of his knowledge and belief, the information in said lists or manifests concerning each of said aliens named therein is correct and true in every respect.' The violation of this oath by the master in stating matters of information in the lists which he knew to be incorrect and untrue, or which he did not believe to be true, might subject him to severer punishment than the imposition of the penalty provided by the act under consideration, and it seems to me would be a greater assurance, if assurance were necessary, that the information furnished was correct and true in every respect, or believed to be so."

United States v. Four Hundred and Twenty Dollars, 162 Fed. 803.

If Congress had intended that the penalty of one hundred dollars per day should apply in case of filing a report that was not true or inaccurate it would have been very easy to have so provided in the statute in language that was clear and definite. Apparently Congress considered that the accuracy of the reports were sufficiently assured by the other laws in force. The reports are required to

be under oath and any wilful misstatement therein would render the officer of the company making and swearing to the same liable to the penalties prescribed for perjury, namely, a fine of not more than two thousand dollars, and imprisonment of not more than five years (Crim. Code, Sec. 125, Compiled Stat. 1913, Sec. 10295), also to the penalties prescribed for a misdemeanor in Sec. 10 of the Act to Regulate Commerce as amended June 18, 1910 (36 Stat. 539, 549). See opinion of Judge *Mack* in *Elgin, Joliet & Eastern Ry. Co. v. U. S.*, supra.

II.

THE STATUTE UNDER CONSIDERATION IS A PENAL STATUTE CARRYING WITH IT SEVERE PENALTIES AND SHOULD THEREFORE BE CONSTRUED STRICTLY AND NOT ENLARGED BY ARGUMENT OR INFERENCE BEYOND THE PLAIN MEANING OF THE LANGUAGE USED.

As stated by Chief Justice Marshall in *United States v. Wiltberger*, 5 Wheat. 76:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative and not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. * * * The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction. The case must be a strong one indeed which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a stat-

ute its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is within its provisions, so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of a kindred character with those which are enumerated."

III.

IF THERE IS ANY AMBIGUITY IN THE STATUTE UNDER CONSIDERATION THAT INTERPRETATION SHOULD BE GIVEN IT THAT WILL RESULT IN A REASONABLE MEANING RATHER THAN THE ONE THAT IS HARSH AND UNREASONABLE.

We think the plain meaning of the statute is that the penalty invoked in this case only applies to a failure to file a report as required and does not apply where an inaccurate or incomplete report has been duly filed. Three United States Circuit Courts of Appeals have expressed themselves of this opinion. On the other hand the government contends that the opposite construction is the correct one and its contention has apparently been sustained by trial judges in the three cases which have been reversed by the Circuit Courts of Appeals.

It may be claimed that this difference of opinion is such as to indicate that there is some ambiguity in the language of the statute. That being so there is room for the Court to consider the reasonableness of the law under the two different constructions.

It should be borne in mind that the purpose of the law requiring the carrier to file monthly reports of excessive service is not to protect the lives of passengers and employes of the Railway Company but merely to facilitate

the work of the Interstate Commerce Commission in discovering violations of the law and the penalty imposed is not for breach of the Hours of Service Statute. That statute itself contains provisions for impositions of penalties for violations thereof.

It was admitted in the Circuit Court of Appeals that the Railway Company in this case had been prosecuted, found guilty and had paid the penalties for violations of the Hours of Service Statute and this action is brought to enforce additional penalties for failing to report the same violations. (See opinion of Judge Sanborn, Fol. 24 of Record).

Under the construction of the statute claimed by the government, if a railroad company by inadvertence or by misinterpretation of the law should file an annual report that was incomplete although intended to be and supposed to be complete when filed and if the railroad company should fail to discover and correct the mistake at the end of a year it would be liable to penalties aggregating more than thirty-six thousand dollars.

In the case at bar the report in question was due on November 30th, 1911. This suit to recover penalties for failure to file the report at the specified time was commenced September 24, 1912, and there had elapsed 297 days since the report became due to be filed; consequently the government contends that the Railway Company had already incurred penalties aggregating $29,700, and the government might just as well have recovered that sum in this action and it is only by favor or grace of some officer of the department of justice that the suit in this case was brought for five hundred dollars instead of twenty-nine thousand seven hundred dollars.

ployees made and filed in good faith within the time prescribed therefor by the Interstate Commerce Commission pursuant to the amendment of section 20 of the act to regulate commerce, 36 Stat., 556, of one or more instances that should have been included therein, or any mistake of law or fact made therein in good faith, does not subject the common carrier to liability for the penalties or forfeitures denounced by that amendment for a failure to file the periodical report.

2. Statutes—Construction—Natural meaning preferred to hidden signification.

The apparent and natural meaning of the terms of a statute is to be preferred to any curious recondite signification deduced by study, ingenuity, and strong desire.

3. Same—Reasonable interpretation preferred to unjust and oppressive one.

A reasonable sensible interpretation of a statute should be preferred to an irrational signification that renders the law unjust and oppressive.

4. Same—Penal statute creating new offense—Persons and acts denounced.

A penal statute which creates a new offense and prescribes the punishment for it must clearly state the persons and acts denounced.

An act or omission which is not clearly an offense by the expressed will of the legislative body before it is committed may not be made so after its commission by the introduction into the law of declarations, or by the expunging therefrom of words or terms by the judiciary.

Sanborn, circuit judge, delivered the opinion of the court.

The railway company complains of a judgment of $500.00 against it for five fines of $100 each for failing for five successive days to correct an unintentional omission of an instance of excessive service of some of its employees from its monthly report of such instances filed with the Interstate Commerce Commission on November 29, 1912.

The Interstate Commerce Commission under the authority of the amendment of section 20 of the act to regulate commerce of February 4, 1887, chap. 104, 24 Stat., 386, made June 18, 1910, and found in chap. 309, sec. 14, 36 Stat., 556 (U. S. Comp. Stat., supp., 1911, page 1305), made an order on June 28, 1911, that all carriers subject to the provisions of "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," commonly called the hours-of-service act, 34 Stat., 1415, should "report within thirty days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in such act," and it was for an innocent omission of one instance from one of these monthly reports that this action was brought. Section 20 of the act of 1887, as amended by the act of June 29, 1906, 34 Stat., chap. 3591, sec. 7, pages 584, 593, authorized the commission to require annual reports from each common carrier subject to the act of its capital stock issued, the amounts paid therefor, the manner of payment therefor, its dividends paid, its surplus fund, the number of its stockholders, its funded and floating debt, the cost and value of its property, franchises, and equipment, the number of its employees and the salaries paid each class, its accidents, earnings, re-

ceipts, expenditures, etc., and it empowered the commission to require from each carrier specific answers to all questions upon which the commission might need information. A subsequent portion of this section 20, as amended in 1910, 36 Stat., 556, read in this way:

> "If any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided."

This quotation contains the only definition of the offense and the only specification of the penalties involved in this case. The offense is the failure "to make and file any such periodical * * * report within the time fixed by the commission," and the penalties are "the forfeitures last above provided." The forfeitures last above provided are prescribed for the failure of the carrier to file in due time its annual report which is required to

set forth the vast mass of statistics and information required by the first portion of section 20, and for its failure to answer any specific question propounded by the commission within the time lawfully prescribed for the answer, and these penalties are the forfeiture of $100.00 for each and every day the carrier shall continue to be in default with respect to the annual report or the answers to the questions. The judgment in this case was rendered upon the pleadings and the material facts which they disclose are these: On October 29, 1911, an engineer, fireman, conductor, and two brakemen were called at 7.30 p. m. to take out a wrecker train at 8.10 p. m. from Jamestown, North Dakota, but it subsequently proved unnecessary to send that train out, and at 8.10 p. m. these employees were released from duty and notified that they would not be required for service until 10.35 p. m., and they rendered no service prior to that, except that the engineer and fireman kept the fire in their engine alive. At 10.35 p. m. they took a train east from Jamestown to Mapleton, where they arrived and where their service ceased at 1.15 p. m. October 30, 1911, so that unless they were in service between 8.10 p. m. and 10.35 p. m. October 29, 1911, their service was only fourteen hours and forty minutes and they rendered no excess service. If, on the other hand, they were on duty between 8.10 p. m. and 10.35 p. m. October 29, their continuous service exceeded the sixteen hours limited by the hours-of-service act. It was conceded at the hearing in this court that the United States had sued the company, had recovered, and the company had paid the penalty prescribed by the hours-of-service act for this excessive service, and that by that judgment the fact that these employees were on

duty from 8.10 p. m. October 29 until 1.15 p. m. October 30 was rendered res adjudicata. On November 29, 1911, the railway company filed its monthly report, under oath, of the instances of hours of service of its employees on duty during October for longer periods than those named in the hours-of-service act in the form and in accordance with the regulations of the Interstate Commerce Commission, and many such instances were disclosed therein. By reason of the abandonment of the wrecker train the company did not consider or understand when it made and filed this report that it was required to report the instance which has been described, and its report was intended in good faith to be true and complete and to embrace any and all instances where its employees were kept in service longer during the month of October than the times limited by the act of Congress, but it did not specify the instance of excessive service on which this suit is founded. The result is that the case in brief is this:

The commission lawfully required the company to file within thirty days after the end of each month a monthly or periodical report of all instances of hours of service of its employees on duty for a longer period than that named in the hours-of-service act. The 20th section of the act to regulate commerce as amended fixed a penalty of $100.00 for each and every successive day of failure of the company to file such a periodical report. The company filed in good faith such a periodical report, under oath, within the time fixed, but unintentionally and by mistake omitted one instance of excessive service from its report which it should have included. Is such an omission a failure to file the periodical report which renders the company liable to the penalty of $100.00 for each

successive day after the expiration of the thirty days within which the report is required to be filed? The court below answered this question in the affirmative and in support of that conclusion counsel for the Government contend that the mistake of the company here was a mistake of law and not of fact, and for the purposes of this discussion and decision this contention may be admitted to be sound. They argue that the order of the commission required a monthly report of all instances of excessive service, that the filing of the report of all instances but one was a failure to file a report of all instances and therefore a failure to file the periodical report which created a liability to the penalties prescribed by the act. But it is not true that a carrier that in good faith files an incorrect or incomplete periodical report, under oath, in due time has failed to file any such periodical report. If it were such a carrier would be liable to penalties for each of the instances of excessive service specified in such a filed report as much as for those omitted and such a result is too intolerable and oppressive to be seriously contemplated. Counsel cite and review the cases that treat of the constitutionality of the hours-of-service act, of its worthy purpose, of the authority of the commission to require the report, and of the duty of the courts to enforce the law (Baltimore & Ohio R. R. Co. v. Interstate Commerce Comm., 221 U. S., 612, 621; United States v. Yazoo & M. V. R. Co., 203 Fed., 159 (D. C.); United States v. Chicago, Milwaukee & Puget Sound Ry. Co., 195 Fed. 783), but they present no direct authority that the filing in good faith of an incomplete or incorrect report, affidavit, complaint, answer, or other such article required by law is a failure to file any such article which subjects

the delinquent to a penalty denounced for such a failure. And there are many reasons why that proposition fails to commend itself to our judgment.

A reasonable, sensible meaning should be attributed to a statute in preference to one which is irrational and improbable. Madden v. Lancaster Co., 65 Fed. 188, 195, 12 C. C. A. 566, 573; Omaha Water Co. v. City of Omaha, 147 Fed. 1, 13, 77 C. C. A. 267, 279; Armour Packing Co. v. United States, 153 Fed. 1, 18, 21, 82 C. C. A. 135, 152, 155; Lafayette Co. v. Wonderly, 92 Fed. 313, 316, 34 C. C. A. 360, 363; Webber v. St. Paul City Ry. Co., 97 Fed. 140, 143, 38 C. C. A. 79, 82. The penalties denounced by section 20 of the act to regulate commerce as amended by the act of June 18, 1910, 36 Stat. 556, for the failure to file this monthly report are the same as those prescribed by the same section for the failure of a carrier to file its annual report. They are $100 for each and every day the carrier shall continue to be in default with respect thereto. The annual report requires such a vast amount of information, so many statistics and details that it is improbable, if not impossible, that any carrier could ever make such a report without some unintentional omission of information required and some mistakes in the information given. If the failure to file an annual report without such an omission and without any mistake or misinformation therein is such a failure to file an annual report as makes the carrier liable for the penalties it must be difficult, if not impossible, for any carrier to escape them, and it is incredible that the Congress intended to subject carriers to the forfeitures prescribed for the failure to file these annual reports on account of such inadvertent omissions or mistakes in them. If the Congress

did not so intend in the case of the annual report it probably did not have that intention in the case of the monthly report, for the same penalties are prescribed in the same section for the failure to file each.

The penalties are $100.00 for each and every day the default in filing the report continues. If these penalties are incurred for failure to file the report, as the statute reads, the act of Congress is neither unreasonable nor excessively drastic, for the carrier knows or may readily ascertain whether or not it has filed its report in due time and hence it is easy for it to prevent any continuing default. But if these penalties are incurred by its innocent omission from or mistake in the specifications of excessive service in the report filed by the carrier the statute becomes irrational and unduly oppressive, for the carrier is not aware and will not have notice of such unintentional omissions and mistakes when it makes its report, and yet for each omission or mistake it may incur a penalty of $100.00 every day for at least three hundred and sixty days, or $36,000.00, and thus an honest error of law or mistake of fact in making the report may easily entail a penalty of $36,000.00, while a wilful delay to file the report immediately and under oath would be limited to $100.00 or $200.00. Indeed, if the construction claimed by counsel for the Government is the true interpretation of this act the United States could recover of the defendant for its omission in this case $100.00 for each day between November 30, 1911, and September 14, 1912, when the complaint in this case was filed, or $28,900.00. Such an interpretation of this act of Congress renders it so unjust and oppressive that we can not think that Congress intended that it should receive such a construction.

Again, this amendment of June 18, 1910, 36 Stat., 556, created and penalized a new offense, the failure of a carrier to file its monthly or periodical report of instances of the excessive service of its employees within the time fixed by the commission. A statute which creates a new offense and prescribes its punishment must state clearly the persons and acts denounced. An act which was not an offense by the expressed will of the legislative body before it was done may not be justly or lawfully made so by construction after it is committed, either by the introduction into the statute of declarations or the expunging therefrom of words or terms by the judiciary. Congress might have modified this clause which describes and limits the offense, to wit: "If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided" so that it would have read: "And if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission or shall omit to specify in any such report it files any instance of excessive service required to be reported therein, it shall be subject to the forfeitures last above provided." But it did not do so, the legal presumption is that it did not intend to do so, and it is not the province of the judiciary thus to amend the statute and by such amendment to create and punish another class of offenses. Nothing comes to mind more appropriate to the determination of the question here at issue than the familiar words of Chief Justice Marshall:

> "Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of words, especially

in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity or of kindred character with those which are enumerated."

United States v. Wiltberger, 18 U. S. 76, 95;
United States v. Ninety-nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12;
First National Bank of Anamoose v. United States, 206 Fed. 374, 376, ...C. C. A. ....

The natural apparent meaning of the terms of a statute should always be preferred to any recondite signification discovered only by study, ingenuity, and strong desire. United States v. Ninety-Nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12; First Nat. Bank of Anamoose v. United States, 206 Fed. 374, 376, 124 C. C. A. 256. The natural apparent meaning of this statute is that Congress relied, and intended to rely, upon the oath to the periodical report and the penalty for perjury in wilfully falsely making it as security for the completeness and truth of the report, and upon the penalty for the failure to file it as security for its filing alone. The terms of the statute are plain and they fail to declare the innocent omission of an instance of excessive service from or the mistake in a report an offense punishable by the fines it specifies. Reason and authority alike teach that the act of omitting from a periodical report filed in good faith an instance or item which should have been included

therein, or a mistake in the information which the report contains is not the offense of failing to file any such periodical report. United States v. Four Hundred Twenty Dollars, 162 Fed. 803, 804; Bonnell v. Griswold, 80 N. Y. 128, 132, 133; Pier v. Hanmore, 86 N. Y. 95, 100; Matthews v. Patterson, 26 Pac. 812, 813; Whitney Arms Co. v. Barlow, 63 N. Y. 62.

And the conclusion is that an omission by a carrier from the periodical report of the instances of excessive service of its employees made and filed in good faith within the time prescribed therefor by the Interstate Commerce Commission under the amendment of section 20 of the act to regulate commerce, 36 Stat. 556, of one or more instances that should have been included therein, or any mistake of law or fact therein made in good faith, does not subject the carrier to liability for the penalties or forfeitures denounced by that amendment for the failure to file a periodical report. The judgment below must, therefore, be reversed and the case must be remanded to the court below for further proceedings not inconsistent with the views expressed in this opinion, and

It is so ordered.

Filed March 21, 1914.

OREGON-WASHINGTON R. & NAV. CO. V. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit.)

(May 3, 1915.)

No. 2490. 222 Fed. 887.

Ross, Circuit Judge. The government brought this action to recover 30 penalties, of $100 each, for the alleged violation of a certain order made by the Interstate Commerce Commission, the authority of which is not questioned. It was made June 28, 1911, and is as follows:

> "It is ordered, that all carriers subject to the provisions of the act entitled 'An act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon,' approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employes subject to said act have been on duty for a longer period than that provided in said act.
>
> "It is further ordered, that the accompanying forms, entitled 'Interstate Commerce Commission Hours of Service Report,' and the method embodied in the instructions therein set forth, be and the same are hereby adopted and prescribed, and all common carriers subject to the said act are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employes on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1911.
>
> "And it is further ordered, that copies of said forms, together with a copy of this order, be forthwith served upon all common carriers subject to said act."

The fact is conceded that the plaintiff in error is a common carrier engaged in interstate commerce, and that its railroad extends through the district of Oregon, and

that it failed to include in its reports to the Commission the specific instances counted on in the complaint in which employes of the plaintiff in error were permitted to remain on duty for a longer period than that prescribed by Act March 4, 1907, c. 2939, commonly called the Hours of Service Act (34 Stat. 1415; [Comp. St. 1913, Secs. 8677-8680]); but it seems to be also conceded by the respective parties that those omissions were inadvertently made, and that all other instances in which such employes were permitted to work overtime were duly reported to the Commission by the railroad company; and the question of law presented for decision is whether such inadvertent omissions rendered the company liable for the fines. The court below, in granting the government's motion for a directed verdict in its favor, and in refusing a like motion made by the defendant railroad company for one in its favor, held that it did, and the sole question for determination here is whether or not that ruling was correct.

The Interstate Commerce Act approved February 4, 1887 (24 Stat. 386, c. 104, Sec. 20), as amended by Act June 18, 1910, c. 309, Sec. 14, 36 Stat. 556 (Comp. St. 1913, Sec. 8592), after authorizing the Commission to require a certain report from all common carriers subject to the provisions of the act touching their income, expenses, indebtedness, etc., and to fix the time and prescribe the manner in which such reports shall be made, provides that:

> "If any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for

making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided."

The order of the Commission above set out, upon which the action is based, was made pursuant to that statutory provision. In the recent case of San Pedro, Los Angeles & Salt Lake Railroad Co. v. United States (decided February 1, 1915), 220 Fed. 737, ... C. C. A. .... in considering the Hours of Service Act, we held that the whole of it "must be taken together, and be so construed as to give effect to its humane purpose, and at the same time to give the railroad companies the benefit of the exceptions and provisos in all cases fairly brought within their terms and true intent"; that the paramount purpose of the act was to prevent the overworking of the employes, to the end that their efficiency be not impaired; and that the obligation was thereby imposed upon the carriers to comply with that requirement, unless prevented therefrom because of a valid excuse.

We think the same common sense and just construction should be placed upon the order of the Interstate Commerce Commission adopted for the purpose of giving effect to that act, and that an omission honestly and inadvertently made from a report of a carrier, filed pursuant to the order, should not be held to subject the carrier to the penalty prescribed by the act of Congress. Undoubtedly the courts should, and no doubt always will, scrutinize any and all such omissions with care (and in jury cases, as was the present, so instruct the jury), to the end that there be no evasion of the requirements; but we cannot think that an honest mistake or omission fairly comes within the provision of either the statute or the order of the Commission. The only reported case cited by counsel directly upon the point is that of Northern Pacific Railroad Co. v. United States, 213 Fed. 162, 129 C. C. A. 514, decided by the Circuit Court of Appeals for the Eighth Circuit, which is in accordance with these views.

It results that the judgment must be and hereby is reversed, and the cause remanded to the court below for a new trial in accordance with the views above expressed.

In the United States Circuit Court of Appeals
For the Seventh Circuit.
No. 2217.
October 5, 1915.
227 Fed. 411.

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Error to the District Court of the United States for the Northern District of Illinois, Eastern Division.

Before Baker, Kohlsaat and Mack, Circuit Judges.

By this writ of error, Elgin, Joliet & Eastern Railway Company seeks to reverse a judgment of $3,000 on a directed verdict, based on thirty counts, each charging a violation of an order of the Interstate Commerce Commission, issued on June 28, 1911, and made pursuant to Sec. 20 of the Act to Regulate Commerce as amended in 1910 (36 Stat. 556).

Prior to 1910, Sec. 20 authorized the Commission to require annual reports under oath containing a vast amount of statistical information and provided that

> "if any carrier, shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto."

By the amendment, the following clause was added:

> "The Commission shall also have authority by general or special orders to require said carriers to file both periodical and special reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided."

The Hours of Service Act (34 Stat. 1416), which the Commission is required to enforce, provides that no train dispatcher "shall be permitted to be and remain on duty for a longer period than nine hours in any 24 hour period * * * except in case of emergency when the employees named may be permitted to be and remain on duty for four additional hours on not exceeding three days in any week."

The Commission's order as set out in the declaration and stipulation of facts on which the case was heard reads as follows:

> "It is Ordered, That all carriers subject to the provisions of the Act entitled 'An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,' approved March 4, 1907, report within 30 days after the end of each month under oath, all instances where employees subject to said Act have been on duty for a longer period than that provided in said Act."

The declaration charged that the defendant "having theretofore failed to make and file with said Commission in any form whatsoever a report of all the instances

wherein its employees subject to" the Hours of Service Act were on duty in "December, 1912, for a longer period than that provided in said Act, did, on the 1st day of February, 1913, continue to be in default with respect thereto and did fail to make and file with said Commission any report of the following instances" alleging specific instances of service in excess of nine hours.

The stipulated facts showed that the employees in question had been in service more than nine but less than thirteen hours for three consecutive days in December, 1912; that for December, 1912, the form of report required by the Commission was made within thirty days and that it contained no reference to the excess hours in question. The court rejected defendant's offer to prove the facts which it claimed constituted an emergency within the statute and its further offer to prove its belief that the facts did constitute a statutory emergency and that these instances were omitted from the regular monthly report only because of the good faith, understanding and belief of defendant's chief dispatcher, whose duty it was to make and who, in fact, made the reports, that under the Commission's order there was no obligation to include these instances and that the omission was not due to any intention to evade either the Hours of Service Act or the Commission's order.

Mack, Circuit Judge, (after stating the facts) delivered the opinion of the court:

While questions as to the scope of the Commission's order and the existence of an emergency have been fully presented, we find it unnecessary to determine them, in view of the conclusions which we have reached as to the construction of Sec. 20.

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The section originally required annual reports from carriers. A mass of detailed statistical information was to be included therein. Accurate information was, of course, desirable. Whoever was charged with the duty of preparing and swearing to such a report must necessarily, however, rely upon the statement of others and upon documents and statistics. Clerical errors might readily occur; both the facts and the law applicable thereto might be uncertain and give rise to what might ultimately be held a mistaken interpretation.

While Congress undoubtedly expected and required an accurate report, it did not, in this section, prescribe a penalty for failure to make the report absolutely exact but for failure to make and file a report within a specified time. Errors and omissions, whether accidental or wilful, might readily escape detection by the executive officials of the carrier and by the Commission; but a failure to file any annual report within the fixed period would be quickly discovered. The penalty of $100 for each day's delay in filing the report would be sufficient to compel prompt attention to such a requirement.

A wilfully sworn false report would subject the affiant to penalties for perjury and the carrier to indictment under Sec. 10 of the Act. These were the express statutory safeguards designed to assure the required accuracy. But in the absence of a clear expression of such intention, it will not be presumed that Congress purposed inflicting on the carrier such a penalty as $100 a day for the innocent omission or innocent misstatement of some one of the thousands of facts required to be reported annually. No such expression appears in and no such intention is to be gathered from the words of the statute.

The penalty prescribed is not for filing a false or erroneous report; unlike the acts considered in 134,901 feet of Pine Lumber, 4 Blatchf. 182; No. 10,523, 18 Fed. Cas. 705, and The Ship Anna, 1 Dall. 197, the statute does not expressly characterize the required report as a *true* report, and punish the failure to make such a report; what it penalizes is the delay in filing any report of the general character specified in the Act. To interpret the penal clause broadly as covering a failure not merely to file a report but also to include therein each item with absolute accuracy would violate the fundamental rules for the construction of penal statutes and, in case the error remained undiscovered for a long time, would subject the carrier to enormous and entirely disproportionate penalties.

The amendment of 1910 emphasizes this construction; it repeats the words of the original clause; it again exacts the penalty for the delay in filing the required report, not for omissions therefrom. While the likelihood of clerical errors and perhaps of mistakes either of law or of fact may be less in periodical or special reports than in the general annual report, the amendment is to be construed in harmony with the original act; so construed, it cannot be held to extend to omissions from or misstatements in the periodical report filed in due time, whether such omissions or misstatements be wilful or accidental.

We concur fully in the opinion rendered by Judge Sanborn in U. S. v. N. P. Ry. Co., 213 Fed. 162 (C. C. A., 8th Circuit), followed in O.-W. R. & N. Co. v. U. S., 222 Fed. 887 (C. C. A., 9th Circuit). Compare, too, U. S. v. Four Hundred and Twenty Dollars, 162 Fed. 803.

As the sufficiency of the declaration has not been and is not questioned by plaintiff in error, it may be construed, especially after verdict, as charging in substance that no report of service for December, 1912, was rendered; this averment, however, is contrary to conceded facts. A verdict for defendant should have been directed.

The judgment will be reversed and the cause remanded for retrial.

UNITED STATES *v.* NORTHERN PACIFIC RAILWAY COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 44. Argued October 27, 1916.—Decided December 4, 1916.

A railroad company which, being required by order of the Interstate Commerce Commission to report all instances in which its employees have been kept on duty longer than the period provided by the Hours of Service Act, 34 Stat. 1415, omits from its report as filed certain instances of excessive service, under the honest but mistaken belief that they did not come within that act, is not liable to the penalties prescribed by § 20 of the Act to Regulate Commerce, as amended June 18, 1910, 36 Stat. 539, 556, where it appears that the mistake was not only honest but was made in a genuinely doubtful case.

Section 20 in its penal features should be applied only to cases coming plainly within its terms. *Semble*, that the only sanction securing the correctness of such reports is the penalty for the perjury committed when the oath under which they are made is violated.

In construing a penal provision, the court will be slow to attribute to Congress an intention to exact punishment which the Government itself has conceded would be greatly disproportionate to the offence.

Statutes should be construed, if possible, so that their requirements shall be apparent in their own terms rather than dependent upon the discretion of executive officers.

213 Fed. Rep. 162, affirmed.

THIS is a civil proceeding brought by the United States in the United States District Court for the District of North Dakota, to recover $500 from the Northern Pacific Railway Company for the claimed failure to file, for five successive days, with the Interstate Commerce Commission, a report of violations of the Hours of Service Act, as required by an order of the Commission issued June 28, 1911.[1] The order was made under authority of § 20 of the Act to Regulate Commerce, as amended June 18th,

1910, 36 Stat. 539, 556, and has the force of statute law. It requires the carrier to report "under oath" within thirty days after the end of each month, all instances where employees have been on duty for a longer period than that provided in said act, which in this case was sixteen hours.

The District Court rendered judgment for the Government, which was reversed by the Circuit Court of Appeals for the Eighth Circuit (213 Fed. Rep. 162). The case is here for decision on writ of certiorari.

The judgment of the District Court was rendered on the pleadings, the admitted facts of the case being as follows:

Five employees of the defendant were called to take charge of a wrecking train at 8.10 o'clock p. m. October 29, 1911, but, before they reported at the place of duty, it was ascertained that such train would not be needed and when they arrived they were notified that their services would not then be required, but that they should report for duty at 10.35 o'clock p. m. the same evening. From 8.10 to 10.35 o'clock they did not render any service "save that they kept alive the fire in the engine during said period." At 10.35 o'clock the five men entered upon a freight train run, which, because of hot boxes, was delayed so that it did not arrive at destination until 1.15 o'clock p. m. the next day.

If the service of the men were considered as beginning at 8.10 o'clock, the hour for which they were called, they were on duty for 17 hours and 5 minutes, but if the time were reckoned from 10.35 p. m., when the men actually took charge of the freight train, they were on duty less than sixteen hours. It is admitted that the officials of the railway company believed in good faith that the time of the men should be reckoned from 10.35 p. m., and not from 8.10 p. m., and that, for that reason, when next after October 30th, 1911, they filed their report of employees

subject to the act who had been kept on duty for a longer period than sixteen hours, the names of the members of this crew were omitted, although the names of many other employees who had been kept on duty longer than the statutory limit were stated in that report.

It was conceded at the hearing in the Circuit Court of Appeals that the United States had sued the company for the "forfeitures" prescribed for these excessive services under discussion in this case, and had secured a judgment which had been paid, and that thereby it was determined, for the purposes of this suit, that these employees were on duty from 8.10 o'clock p. m., and therefore for more than sixteen hours.

The Government's claim in the case is for the omission for five days to file the report and it prays judgment for "forfeitures" aggregating $500, although when the complaint was filed the report claimed to be defective had been on file from November 30th, 1911, to September 14th, 1912, and if the "forfeitures" of $100 per day prescribed by the law for each day of failure to file a proper report were allowed, the amount of recovery by the Government would be $28,900, and it is only by grace of the public officials that the claim in the suit was not for this amount instead of for $500.

Mr. Assistant Attorney General Underwood for the United States.

Mr. Emerson Hadley, with whom *Mr. Charles W. Bunn* was on the brief, for respondent.

MR. JUSTICE CLARKE, after making the foregoing statement, delivered the opinion of the court.

It will be seen from the foregoing statement of facts that the question presented by the record in this case for decision is: Assuming that the law required that in the

report of the company filed on November 30th, 1911, the names of these five employees of the defendant should have been included as having been on duty for more than sixteen hours, and that their names were omitted from that report because it was in good faith believed that their hours of service should be computed from 10.35 o'clock p. m., and that, therefore, they had not been on duty in excess of sixteen hours, is the company liable for the "forfeitures" prescribed by the statute, judgment for which was prayed for in the complaint?

Section 20 of the Act to Regulate Commerce of February 4, 1887, as amended June 18, 1910, 36 Stat. 556, requires the filing of elaborate annual reports by carriers and also the filing of such special reports as the Commission may, by general or special order, require. On the twenty-eighth day of June, 1911, the Commission ordered that all carriers subject to the provisions of the act should report "under oath" within thirty days after the end of each month all instances of employees who had been on duty for a longer time than that required by the act. It is for violation of this order, which has the effect of statute law, that this suit was instituted, it being admitted by the Government that the failure to mention these five men in the report by the defendant, filed at the proper time, and which contained a report of many men kept on duty for a period longer than the time allowed by law, was due to the fact that it in good faith believed that these men commenced their time of service at 10.35 instead of at 8.10 o'clock, and that therefore they were not on duty more than the sixteen hours prescribed by the statute. The defendant in error contends that judgment is asked for an omission caused by an honest mistake with respect to a genuinely doubtful case in a report which was properly filed and this, it is claimed, is not a violation of the law. The statute is a penal one and should be applied only to cases coming plainly within its terms. *Steam*

Engine Co. v. *Hubbard*, 101 U. S. 188. While the reports filed must be truthful reports (*Yates* v. *Jones National Bank*, 206 U. S. 158), yet, since they must be made under oath, the penalties for perjury would seem to be the direct and sufficient sanction relied upon by the law-making power to secure their correctness.

We are confirmed in this conclusion by the fact that the annual report required of carriers by this same § 20 of the act calls for so great an amount of detailed information that it would be difficult, if not impossible, for any one to prepare such a report without making some unintentional omission or mistake, and we cannot bring ourselves to think that Congress intended to punish such an innocent mistake or omission with a penalty of $100 a day.

There are, to be sure, many statutes which punish violations of their requirements regardless of the intent of the persons violating them, but innocent mistakes, made in reporting facts, where the circumstances are such that candid minded men may well differ in their conclusions with respect to them, should not be punished by exacting penalties, except where the express letter of the statute so requires, and we conclude that the section under discussion contains no such requirement. In reports in which a mistake is much more likely to prove harmful than in such a report as we have here, the national banking laws punish mistakes only where "knowingly" made.

It is argued that if good faith will excuse an omission or a mistaken statement in this report, it will be widely taken advantage of as a cover for making false and fraudulent statements in such reports in the future. Such a prospect seems quite groundless, since many, if not most, criminal laws imposing penalties are made applicable only in cases where corrupt intent or purpose is established to the satisfaction of a court or jury, yet such requirement has not been found in practice to be an encouragement to wrongdoing.

The fact that the Government sues for only one fifty-seventh part of the forfeitures which had accrued under the construction of the rule and statute contended for by it, should make us slow to attribute to Congress a purpose to exact what is thus admitted to be a punishment greatly disproportionate to the offense. Statutes should be construed, as far as possible, so that those subject to their control may, by reference to their terms, ascertain the measure of their duty and obligation, rather than that such measure should be dependent upon the discretion of executive officers, to the end that ours may continue to be a Government of written laws rather than one of official grace.

It being very clear that it is not the purpose of the law under discussion to punish honest mistakes, made in a genuinely doubtful case, the decision of the Circuit Court of Appeals is

Affirmed.